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In re Application of
ITOH et al.
Serial No.: 10/589,243
PCT No.: PCT/JP04/11536
Int. Filing Date: 11 August 2004
Priority Date: 13 February 2004
Attorney's Docket No.: 1035-648
For: LASER DEVICE AND LASING METHOD

DECISION ON PETITION
UNDER 37 CFR 1.181

This decision is in response to applicant's "Response to Notice of Abandonment" requesting withdrawal of the holding of abandonment filed 27 June 2008 in the United States Patent and Trademark Office (USPTO) in the above-captioned application and will be treated as a petition under 37 CFR 1.181.

On 14 August 2006, applicant filed the U.S. national stage application for international application PCT/JP04/11536, under 35 U.S.C. 371. These papers were assigned U.S. serial number 10/589,243.

On 24 April 2007, a Notification of Missing Requirements, was mailed to applicant indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) and (b), was required.

On 20 June 2008, a Notification of Abandonment was mailed to applicant indicating that applicant failed to respond to the Notification of Missing Requirements.

On 27 June 2008, applicant filed the instant petition, accompanied by a copy of the declaration and the itemized postcard receipt with USPTO date-stamp 03 May 2007, indicating receipt of, *inter alia*, a declaration executed by the inventors.

DISCUSSION

Applicant requests withdrawal of the holding of abandonment, indicating that a response to the Notification of Missing Requirements, was mailed on 03 May 2007.

As stated in section 503 of the Manual of Patent Examining Procedure (Rev. 6, September 2007)(MPEP):

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Applicant states that the executed declaration was originally filed on 03 May 2007 and provided a copy of the USPTO date-stamped postcard receipt.

The postcard identifies the application number, applicant name and docket number. Among the items listed on the postcard receipt are "Declaration" and Assignment". The postcard is date-stamped by the USPTO "OIPE MAY 03 2007."

A review of the USPTO date-stamped, itemized postcard receipt indicates that the declaration was deposited with the USPTO on 03 May 2007. Applicant has now presented a copy of the papers originally filed on 03 May 2007 and provided a copy of the date-stamped postcard receipt. Thus, the evidence is sufficient to establish that the declaration was received in the USPTO on 03 May 2007 and that the postcard receipt indicating a date of 03 May 2007 was mailed by the USPTO. Accordingly, the Office accepts the copy of the papers as a replacement for the missing original documents with a deposit date of 03 May 2007.

A review of the declaration reveals that the declaration identifies and is executed by each inventor, and states the residency, citizenship and mailing address of each inventor. Thus, the declaration is acceptable and the requirements of 37 CFR 1.497(a) and (b).

CONCLUSION

The petition under 37 CFR 1.181 is **GRANTED**.

The 20 June 2008 Notification of Abandonment is hereby **VACATED**.

The copy of the declaration, submitted on 03 May 2007 and resubmitted on 27 June 2008 is acceptable. The declaration meets the requirements of 37 CFR 1.497(a) and (b). The surcharge of \$130 was paid on 14 August 2006.

The application will be forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing. The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date is 03 May 2007.



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